

October 15, 2009

VIA FIRST-CLASS MAIL

Mr. William Mahan, AIA
1555 Las Canoas Road
Santa Barbara, California 93105

Re: Law on Rebuilding of Nonconforming Uses

Dear Bill:

You have requested that I review the applicable law regarding the reconstruction of non-conforming uses in the City of Santa Barbara that have been destroyed or partially destroyed as a result of fire, flood, wind, earthquake or other calamity.

A non-conforming use is typically a building that was built to comply with zoning codes in existence many years ago that no longer complies with current zoning regulations due to changes in the laws that have taken place since the structure was originally built.

Zoning ordinances are generally prospective and do not affect non-conforming uses. Zoning ordinances restrict new construction but have no retroactive effect on existing structures which become legal non-conforming uses. (8 Witkin, Summary Calif. Law (10th ed. 2005) § 1040.) Owners of legal non-conforming buildings have a vested right to continue their current use unless it constitutes a nuisance.

The Santa Barbara Municipal Code follows this pattern. It expressly provides for the continuing maintenance, improvement, and alteration of non-conforming buildings within specific guidelines. (Santa Barbara Municipal Code § 28.87.030.)

Where a structure is destroyed or partially destroyed by calamity, the non-conforming use ordinarily may be rebuilt because the property owner is not considered to have shown any intent to abandon or renounce the non-conforming use. (8A McQuillin, The Law of Municipal Corporations (3rd ed.) § 25.196.)

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Where a nonconforming use is destroyed by fire or natural disaster, there is no abandonment since the destruction evidences no intent by the owner to renounce the use.

(Id.)

The Santa Barbara Municipal Code is typical in this respect in that it contains an provision stating that where a non-conforming building is less than 75% destroyed by a calamity, the building may be restored to its original condition so long as the reconstruction begins within one year of the occurrence of the damage or destruction. (Santa Barbara Municipal Code § 28.87.038.)

This section of the Municipal Code would be the controlling law in the event that any structure exceeding the height limits of Measure B, or any other zoning provision, were to be damaged or destroyed in a calamity. Nothing in Measure B would change this rule.

Moreover, in connection with the Tea Fire, the City Council exercised its authority to extend the time period to commence reconstruction to 24 months. Measure B does not limit or restrict the City Council's authority to grant waivers and variances with respect to the reconstruction of legal, non-conforming uses.

Sincerely,

Eugene S. Wilson